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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 CHINA CENTRAL TELEVISION, a China
company; CHINA INTERNATIONAL
13 COMMUNICATIONS CO., LTD., a China
company; TVB HOLDINGS (USA), INC., a
14 California corporation; and DISH
NETWORK L.L.C., a Colorado corporation,
15 Plaintiffs,

vs.

16 CREATE NEW TECHNOLOGY (HK)
LIMITED, a Hong Kong company; HUA
17 YANG INTERNATIONAL TECHNOLOGY
LIMITED, a Hong Kong company;
18 SHENZHEN GREATVISION NETWORK
TECHNOLOGY CO. LTD., a China
19 company; CLUB TVPAD, INC., a California
corporation; BENNETT WONG, an
20 individual, ASHA MEDIA GROUP INC.
d/b/a TVPAD.COM, a Florida corporation;
21 AMIT BHALLA, an individual;
22 NEWTVPAD LTD. COMPANY d/b/a
NEWTVPAD.COM a/k/a TVPAD USA, a
23 Texas corporation; LIANGZHONG ZHOU,
an individual; HONGHUI CHEN d/b/a E-
24 DIGITAL, an individual; JOHN DOE 1 d/b/a
BETV; JOHN DOE 2 d/b/a YUE HAI; JOHN
25 DOE 3 d/b/a 516; JOHN DOE 4 d/b/a HITV;
JOHN DOE 5 d/b/a GANG YUE; JOHN
26 DOE 6 d/b/a SPORT ONLINE; JOHN DOE 7
d/b/a GANG TAI WU XIA; and JOHN DOES
27 8-10,
Defendants.

} Case No.
CV 15-1869 SVW (AJWx)
} **NOTICE OF MOTION AND**
} **MOTION TO HOLD THIRD**
} **PARTIES AZURE**
} **TECHNOLOGY CO., LTD.;**
} **ZERO DDOS LLC; AND**
} **CLEARDDOS**
} **TECHNOLOGIES IN**
} **CONTEMPT**

} [Proposed] Order and
Declarations of Wukoson and
Braak submitted concurrently]

} Date: November 27, 2017

} Time: 1:30 p.m.

} Courtroom: 10A

} Judge: Hon. Stephen V.
Wilson

} Complaint Filed: March 13, 2015

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on November 27, 2017 at 1:30 p.m., or as
3 soon thereafter as the matter may be heard, in Courtroom 10A of the Honorable
4 Stephen V. Wilson, located at 350 W. 1st Street, 10th Floor, Los Angeles, California,
5 Plaintiffs China Central Television, China International Communications Co., Ltd.,
6 TVB Holdings (USA), Inc., and DISH Network L.L.C. (collectively “Plaintiffs”) will
7 and hereby do move this Court to hold the third-party internet service providers
8 Azure Technology Co., Ltd. (“Azure Tech”), ZERO DDOS LLC (“Zero DDOS”),
9 and ClearDDoS Technologies (“Clear DDOS”) (collectively, the “Non-Compliant
10 ISPs”) in contempt of this Court’s Second Amended Order Granting Plaintiffs’
11 Motion for Default Judgment and Permanent Injunction [ECF No. 214] (the
12 “Permanent Injunction Order”).

13 As set forth in the accompanying declarations and memorandum of points and
14 authorities, Plaintiffs are entitled to an order finding the Non-Compliant ISPs in
15 willful contempt of the Permanent Injunction Order since each of the Non-Compliant
16 ISPs received actual notice of the Permanent Injunction Order no later than May 22,
17 2017, and yet each of the Non-Compliant ISPs has refused to obey the Permanent
18 Injunction Order. Specifically, in violation of the Permanent Injunction Order, each
19 of the Non-Compliant ISPs continues to host digital content used by Defendants
20 Create New Technology (HK) Limited and Hua Yang International Technology
21 Limited (“Defendants”) and other Enjoined Parties¹ to infringe Plaintiffs’
22 copyrighted TV programming.

23

24 ¹ As defined in the Permanent Injunction Order, the “Enjoined Parties” are
25 Defendants, and all of their parents, subsidiaries, affiliates, officers, agents, servants
26 and employees, and all those persons or entities acting in active concert or
27 participation with Defendants (including but not limited to parties that procure or
provide sales, distribution, shipping or logistics services, primary and backup storage
services, or web, server or file hosting services on behalf of Defendants, including
but not limited to those parties listed in Exhibits C and D to the Permanent Injunction

1 Accordingly, Plaintiffs seek entry of an order (the “Compliance Order”) (a)
2 holding each of the Non-Compliant ISPs in contempt of court; (b) directing that each
3 Non-Compliant ISP promptly comply with the Permanent Injunction Order; (c)
4 assessing against each of the Non-Complaint ISPs the attorneys’ fees and costs
5 Plaintiffs have incurred in making this motion; and (d) directing that any Non-
6 Compliant ISP that fails to comply with the Permanent Injunction Order within five
7 (5) court days of receiving notice of the Compliance Order shall pay to the Court a
8 fine of \$1,000 per day until such time as that Non-Compliant ISP complies with the
9 Permanent Injunction Order.

10 As detailed in the attached declarations and exhibits, counsel for Plaintiffs
11 informed all the Non-Compliant ISPs that their failure to comply with the Permanent
12 Injunction Order could result in Plaintiffs potentially seeking relief from the Court
13 and their being held in contempt. Two of the Non-Compliant ISPs originally
14 responded to Plaintiffs’ communications, but have since stopped responding to
15 Plaintiffs’ communications entirely. One of the Non-Compliant ISPs never
16 responded to Plaintiffs’ communications. Thus, counsel for Plaintiffs have been
17 unable to conduct a conference of counsel pursuant to L.R. 7-3.

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28 Order) and all persons and entities who receive actual notice of the Permanent
Injunction Order. (Permanent Injunction Order at 5, ¶ 9.)

1 This Motion is based upon this Notice, the Memorandum of Points and
2 Authorities, the Declarations of George P. Wukoson and Nicholas Braak, Exhibits 1
3 through 26, and any additional evidence and arguments as may be presented at or
4 before any hearing on this matter.

5 DATED: October 17, 2017

DAVIS WRIGHT TREMAINE LLP
SEAN M. SULLIVAN
ROBERT D. BALIN (*pro hac vice*)
LACY H. KOONCE, III (*pro hac vice*)
SAMUEL BAYARD (*pro hac vice*)

8
9 By: _____ /s/Sean M. Sullivan
10 Sean M. Sullivan

11 Attorneys for Plaintiffs
12 CHINA CENTRAL TELEVISION; CHINA
13 INTERNATIONAL COMMUNICATIONS CO.,
14 LTD.; TVB HOLDINGS (USA), INC.; AND
15 DISH NETWORK L.L.C.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As this Court knows, this lawsuit concerns massive ongoing copyright and trademark infringement by Defendants, who develop, sell, and operate infringing software applications (“Infringing Apps”) on set-top box devices known as TVpad and blueTV, and who transmit infringing video of Plaintiffs’ copyrighted television programs to those Infringing Apps over the internet. Defendants could not accomplish any of this infringement without using the services of numerous third-party internet service providers (“ISPs”). Defendants particularly rely on third parties to host their infringing content and provide other related data storage and delivery services. These third party ISPs provide the servers and connections that Defendants must use to store and deliver infringing streaming video and updates to the Infringing Apps, among other things. For this reason, the Permanent Injunction Order (and an earlier Preliminary Injunction) granted by this Court [ECF No. 214] contains provisions that expressly prohibit ISPs and other third parties who receive notice from providing hosting services for the infringing content. While the Defendants have defaulted and have flagrantly ignored and violated this Court’s injunctions, Plaintiffs have obtained largely effective enforcement of this Court’s injunctions by serving them on third party ISPs.

Although most third-party ISPs have obeyed this Court’s injunctions, the Non-Compliant ISPs—Azure Tech, Zero DDOS, and Clear DDOS—have continually ignored and refused to comply with those injunctions. These Non-Compliant ISPs have been given ample and repeated notice of the Preliminary Injunction and the Permanent Injunction Order, and have taken zero steps to comply with them. Instead, the Non-Compliant ISPs have responded to Plaintiffs by merely stating that they have informed their customers—Defendants and other Enjoined Parties—of Plaintiffs’ demands for compliance. When Plaintiffs have patiently explained to the

1 Non-Compliant ISPs that this does not satisfy the injunctions, the Non-Compliant
2 ISPs have responded with silence and evasion. The Non-Compliant ISPs have thus
3 plainly and willfully refused to accord any respect to this Court and its orders. The
4 Court should therefore enter the Compliance Order, holding the Non-Compliant ISPs
5 in contempt, directing that they immediately comply, awarding Plaintiffs their
6 attorneys' fees in making this motion, and fining the Non-Compliant ISPs \$1,000 per
7 day in the event of further non-compliance.

8 II. FACTUAL BACKGROUND

9 On June 11, 2015, this Court issued a Preliminary Injunction [ECF No. 98]
10 ("Preliminary Injunction"). Thereafter, the Court also issued a series of permanent
11 injunctions (each amending the last) against the Defendants (who manufacture the
12 TVpad device and a Comparable System² known as the blueTV device) and other
13 Enjoined Parties culminating in the Permanent Injunction Order, issued on May 10,
14 2017 [ECF No. 214].

15 The Permanent Injunction Order permanently enjoins Defendants and other
16 Enjoined Parties from, among other things: distributing and advertising TVpad
17 devices and blueTV devices; distributing and advertising Infringing TVpad Apps and
18 similarly infringing blueTV apps; providing or controlling servers hosting infringing
19 copies of Plaintiffs' copyrighted TV programming; technologically assisting with
20 streaming of infringing copies of Plaintiffs' copyrighted TV programming; and
21 otherwise infringing Plaintiffs' rights in their copyrighted TV programming.
22 (Permanent Injunction Order at 5–7, ¶ 9.) The Permanent Injunction Order also
23 permanently enjoins Defendants and other Enjoined Parties from encouraging or
24 soliciting others to: transmit, reproduce, or offer transmissions of Plaintiffs'
25

26 ² As defined in the Permanent Injunction Order, a "Comparable System"
27 means any device, data transmission service or application that provides users
unauthorized access to Plaintiffs' copyrighted programming, using any peer to peer
or internet based transmission, file sharing or content delivery technology, including
but not limited to the blueTV device. Permanent Injunction Order at 3, ¶ 1(g).

1 copyrighted TV programming; or upload, post, or index any files that constitute or
2 point to Plaintiffs' copyrighted TV programming. (Permanent Injunction Order at 7,
3 ¶ 10.)

4 Recognizing that Defendants conduct their internet-based infringing activities
5 through the use of third-party ISPs, the Permanent Injunction Order also contains
6 provisions that expressly enjoin ISPs and other third parties who receive notice of the
7 Permanent Injunction Order. These provisions state as follows:

8 "Third parties providing web, server and file hosting services, data center and
9 colocation services, and primary and backup storage services (including but
10 not limited to cloud storage services) used in connection with the activities
11 enjoined . . . hereinabove, including but not limited to the third parties
12 providing hosting services for the Internet servers identified in **Exhibit C**
13 hereto (including but not limited to servers providing streaming video,
14 application files, TVpad Store functionality, and TVpad Device initialization,
operation and authentication) and who receive actual notice of this Order, are
immediately and permanently enjoined from providing such hosting services
to (i) any Enjoined Parties in connection with the activities enjoined . . .
hereinabove; (ii) any server, IP address, domain name or website used in
conjunction with the TVpad Device, Infringing TVpad Apps or any
Comparable System; and (iii) the TVpad Websites.

15 Third parties providing services used in connection with the activities enjoined
16 . . . hereinabove, including but not limited to back-end service providers,
17 service providers routing traffic or providing bandwidth, content delivery
networks and domain name server systems (including but not limited to
CloudFlare and DNSPod), search-based online advertising services (such as
through paid inclusion, paid search results, sponsored search results, sponsored
links, and Internet keyword advertising), domain name registration privacy
protection services, providers of social media services (including but not
limited to Facebook and Twitter), user generated and online content services
(including but not limited to YouTube) and data security services (including
but not limited to denial-of-service attack prevention, firewall and proxy
services), who receive actual notice of this Order are permanently enjoined
from providing such services to: (i) any Enjoined Parties in connection with
the activities enjoined . . . hereinabove; (ii) any server, IP address, domain
name or website used in conjunction with the TVpad Device, Infringing
TVpad Apps or any Comparable System; and (iii) the TVpad Websites."

24 (Permanent Injunction Order at 9–10, ¶¶ 16–17 (emphasis in original).)

25 The Permanent Injunction Order explicitly identifies Azure Tech, Zero DDOS,
26 and Clear DDOS in Exhibit C. (Permanent Injunction Order Ex. C.)

27

28

1 Each of these Non-Compliant ISPs has received repeated notices of the
2 Permanent Injunction Order, and in some cases prior injunctions in this action, as
3 follows:

4 On October 12, 2015, Plaintiffs sent Clear DDOS a copy of the Preliminary
5 Injunction, notified Clear DDOS of the terms of the Preliminary Injunction binding
6 on it, and requested that Clear DDOS cease providing hosting services to the
7 Enjoined Parties in connection with their infringing activities. (Declaration of George
8 P. Wukoson (“Wukoson Decl.”), dated October 12, 2017 ¶ 7.) A “Nico Zheng”
9 responded to say only, “We have inform user to check, thanks.” (*Id.* ¶ 8.) When
10 Plaintiffs reiterated in writing that this Court’s Preliminary Injunction required that
11 Clear DDOS cease providing services to the Enjoined Parties, Mr. Zheng responded
12 evasively and refused to comply:

13 “*We will fully assist for your request. However, we have no idea about the*
14 *clients content if there's any copyright issue. And we also has contract and*
15 *SLA with the client. So its [sic] not that easy for us to simply shutdown all*
16 *their service just based your email notice. We will escalate this issue to the*
17 *client, hopefully to get this issue be fixed asap.*”

18 (*Id.* ¶ 9.) Plaintiffs sent Mr. Zheng another demand that Clear DDOS comply with
19 the Preliminary Injunction, but Clear DDOS did not respond. (*Id.*)

20 On May 22, 2017, Plaintiffs sent Clear DDOS a copy of the Permanent
21 Injunction Order, notified Clear DDOS of the terms of the Permanent Injunction
22 Order binding on it, and requested that Clear DDOS cease providing hosting services
23 to the Enjoined Parties in connection with their infringing activities. (*Id.* ¶ 10.) Even
24 though Plaintiffs addressed this May 2017 correspondence to the same email and
25 physical addresses as Plaintiffs’ prior correspondence that elicited a response from
26 Mr. Zheng, Clear DDOS entirely ignored this May 2017 correspondence, follow-up
27 correspondence from Plaintiffs, and the Court’s Permanent Injunction Order. (*Id.* ¶¶
28 10–11.)

29 Azure Tech is the alter ego of a company called Cloud DDOS Technology
30 Co., Limited (“Cloud DDS”). (Declaration of Nick Braak (“Braak Decl.”), dated

1 October 12, 2017, ¶ 7.) On October 12, 2015, Plaintiffs sent Cloud DDOS a copy of
2 the Preliminary Injunction, notified Cloud DDOS of the terms of the Preliminary
3 Injunction binding on it, and requested that Cloud DDOS cease providing hosting
4 services to the Enjoined Parties in connection with their infringing activities.
5 (Wukoson Decl. ¶ 14.) Nico Zheng also responded to this email to similarly state,
6 “we have inform our user to check, thanks.” (*Id.* ¶ 15.) In response, Plaintiffs sent an
7 email to Mr. Zheng to reiterate that Cloud DDOS could not comply with the
8 Preliminary Injunction merely by notifying its customers of it. (*Id.*)

9 On May 22, 2017, Plaintiffs sent Azure Tech a copy of the Permanent
10 Injunction Order, notified Azure Tech of the terms of the Permanent Injunction Order
11 binding on it, and requested that Azure Tech cease providing hosting services to the
12 Enjoined Parties in connection with their infringing activities. (*Id.* ¶ 16.) Having
13 received no response, Plaintiffs sent follow-up emails to Azure Tech in June and July
14 2017, again demanding that Azure Tech comply with the Permanent Injunction Order
15 and notifying Azure Tech of additional IP addresses of Azure Tech servers the
16 Enjoined Parties were using to carry out their infringement. (*Id.* ¶ 17.) Azure Tech’s
17 only response was to state it had notified its users of the issue. (*Id.* ¶ 18.) When
18 Plaintiffs once again informed Azure Tech that it was clearly violating the Permanent
19 Injunction Order, Azure Tech did not respond. (*Id.* ¶ 19.)

20 On October 12, 2015, Plaintiffs sent Zero DDOS a copy of the Preliminary
21 Injunction, notified Zero DDOS of the terms of the Preliminary Injunction binding on
22 it, and requested that Zero DDOS cease providing hosting services to the Enjoined
23 Parties in connection with their infringing activities. (*Id.* ¶ 21.) Zero DDOS never
24 responded to this letter. (*Id.*) On May 22, 2017, Plaintiffs sent Zero DDOS a copy of
25 the Permanent Injunction Order, notified Zero DDOS of the terms of the Permanent
26 Injunction Order binding on it, and requested that Zero DDOS cease providing
27 hosting services to the Enjoined Parties in connection with their infringing activities.
28 (*Id.* ¶ 22.) Plaintiffs received confirmations that this May 22nd letter was delivered to

1 Zero DDOS. (*Id.* ¶ 22, Exs. 25-26.) Having received no response, Plaintiffs then sent
2 a follow-up email to Zero DDOS on June 1, 2017. (*Id.* ¶ 23.) Zero DDOS has never
3 responded to any of Plaintiffs' correspondence. (*Id.* ¶ 19.)

4 From July through September 2017, Plaintiffs' investigator Nicholas Braak
5 tested several TVpad and blueTV devices to determine which, if any, third party ISPs
6 were still hosting digital content used by the TVpad and blueTV devices and their
7 Infringing Apps to stream infringing video of Plaintiffs' copyrighted TV
8 programming. (Braak Decl. ¶ 5, Ex. 2.) During this period, Mr. Braak's testing
9 consistently showed that, despite having received the Permanent Injunction orders,
10 each of the Non-Compliant ISPs is continuing to host digital content used by the
11 TVpad and blueTV devices and their Infringing Apps to stream infringing video of
12 Plaintiffs' copyrighted TV programming. (*Id.* ¶ 6, Ex. 2.)

13 In sum, Plaintiffs have given Clear DDOS, Azure Tech, and Zero DDOS
14 repeated and ample notice of the Permanent Injunction Order and earlier injunctions
15 entered in this action. Despite having received repeated notices of this Court's
16 Permanent Injunction Order, the Non-Compliant ISPs continue to host infringing TV
17 content for the Enjoined Parties in flagrant violation of the Permanent Injunction
18 Order.

19 III. ARGUMENT

20 A finding of contempt against the Non-Compliant ISPs and imposition of
21 coercive penalties and attorneys' fees is clearly warranted.

22 A. Standard for Determining Civil Contempt.

23 "A court has wide latitude in determining whether there has been
24 contemptuous defiance of its order." *Gifford v. Heckler*, 741 F.2d 263, 266 (9th Cir.
25 1984). "Civil contempt occurs when a party disobeys a specific and definite court
26 order by failing to take all reasonable steps within its power to comply." *BOLDFACE*
27 *Licensing + Branding v. By Lee Tillett, Inc.*, No. 12 Civ. 10269 (ABC) (PJWX),
28 2014 WL 12558005, at *3 (C.D. Cal. Mar. 20, 2014).

1 “The party moving for contempt bears the burden of establishing by clear and
2 convincing evidence that the contemnor has violated a specific and definite order of
3 the court.” *Bademyan v. Receivable Management Services Corp.*, Case No. CV 08-
4 00519 MMM (RZx), 2009 WL 605789, at *2 (C.D. Cal. Mar. 9, 2009) (citing
5 *Wolfard Glassblowing Co. v. Vanbragt*, 118 F.3d 1320, 1322 (9th Cir. 1997); *Balla*
6 *v. Idaho State Bd. of Corrections*, 869 F2d 461, 466 (9th Cir. 1989)). “Once the
7 moving party shows by clear and convincing evidence that the contemnor has
8 violated a specific and definite order of court, the burden shifts to the contemnor to
9 demonstrate that he or she took every reasonable step to comply, and to articulate
10 reasons why compliance was not possible.” *Bademyan*, 2009 WL 605789, at *2
11 (citing *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983)). “Intent is not an
12 issue in civil contempt proceedings. The sole question is whether a party complied
13 with the district court’s order.” *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir.
14 1983) (internal citations omitted).

15 **B. Plaintiffs Have Produced Clear and Convincing Evidence of the
16 Non-Compliant ISPs’ Wholesale Failure to Comply with This
17 Court’s Permanent Injunction Order.**

18 Notwithstanding the clear terms of the Court’s Permanent Injunction Order
19 explicitly binding the Non-Compliant ISPs, the Non-Compliant ISPs have taken
20 absolutely no steps to comply. Despite having received notice of the Court’s
21 Permanent Injunction Order more than three months ago (and having similarly
22 received notice of the Preliminary Injunction over 11 months ago), the Non-
23 Compliant ISPs have knowingly refused to cease providing services to the Enjoined
24 Parties, as both Injunctions require they do. To this day, the Non-Compliant ISPs all
25 continue to violate the provisions of the Permanent Injunction Order that bind them.
26 The Non-Compliant ISPs’ total failure to comply with the Court’s Permanent
27 Injunction Order cannot be explained by good faith or any reasonable interpretation
28 of the Permanent Injunction Order, and, as such, a finding of civil contempt is
appropriate.

1
2
3 **1. The Court's Permanent Injunction Order Is Clear and
Definite.**

4 The Court's Permanent Injunction Order in this matter is clear and not
5 susceptible to any reasonable interpretation that would explain the Non-Complaint
6 ISPs' failure to take any steps to comply with the Permanent Injunction Order.
7 *Wolfard Glassblowing*, 118 F.3d at 1322. As it applies to the Non-Compliant ISPs,
8 the Permanent Injunction Order sets forth a simple directive: upon receiving notice
9 of the Permanent Injunction Order, the Non-Compliant ISPs must cease providing
10 hosting services to the Enjoined Parties. (Permanent Injunction Order at 9–10, ¶¶
11 16–17.) The Permanent Injunction Order even includes a list (Exhibit C) of the
12 precise IP addresses of servers owned or controlled by the Non-Compliant ISPs that
13 the Enjoined Parties are using to host content used in conjunction with their enjoined
14 infringing activities. There is nothing in the Permanent Injunction Order that is in
15 any way unclear regarding what the Non-Compliant ISPs must do to comply with the
16 Permanent Injunction Order.

17
18 **2. The Non-Compliant ISPs Received Notice of the Permanent
Injunction Order, But They Have Failed and/or Refused to
Remove or Disable Infringing Content Used by the Enjoined
Parties.**

20 Despite being permanently enjoined from doing so, Defendant Create New
21 Technology (HK) Limited (“CNT”) has brazenly continued to transmit Plaintiffs’
22 copyrighted television programs through Infringing Apps on the TVpad and blueTV
23 devices. For this reason, this Court found CNT in contempt and imposed a coercive
24 fine and award of attorneys’ fees against it. [ECF No. 140] However, because
25 Defendant CNT is located in China and geographically outside of the Court’s reach,
26 it has continued to flout the Court’s Permanent Injunction Order. CNT and the other
27 Enjoined Parties have been able to continue to operate the Infringing Apps on the
28 TVpad and blueTV devices due to the intransigence of the Non-Compliant ISPs.

1 Plaintiffs have given the Non-Compliant ISPs ample and frequent notice of the
2 Permanent Injunction Order and the prior Preliminary Injunction Order, highlighting
3 the terms of the order that require the Non-Compliant ISPs to cease providing content
4 hosting services to the Enjoined Parties and painstakingly explaining the binding
5 nature of these Injunctions to the Non-Compliant ISPs. Despite Plaintiffs' careful
6 explanations, the Non-Compliant ISPs have stubbornly refused to comply with the
7 injunctions.

8 **C. The Non-Compliant ISPs' Refusal to Obey the Court's Permanent
9 Injunction Order Merits A Finding of Contempt, and Imposition of
Coercive Sanctions for Continued Non-Compliance.**

10 Once a violation of a court order has been shown, civil contempt sanctions
11 may be imposed. Civil contempt sanctions are employed "to coerce the defendant
12 into compliance with the court's order." *Whittaker Corp. v. Execuair Corp.*, 953 F.2d
13 510, 517 (9th Cir. 1992); *see also Citizens for Lawful and Effective Attendance
Policies v. Sequoia Union High School District*, No. C 87-3204 MMC, 1998 WL
14 305513, at *4 (N.D. Cal. June 4, 1998).

16 Civil coercive sanctions by their very nature are "conditional"—meaning "they
17 only operate if and when the person found in contempt violates the order in the
18 future." *Id.* (internal citation omitted). Civil contempt sanctions that are coercive in
19 nature are paid to the district court. *See General Signal Corporation v. Donallco,
Inc.*, 787 F.2d 1376, 1380 (9th Cir. 1986). "A court, in determining the size and
21 duration of a coercive fine, must 'consider the character and magnitude of the harm
22 threatened by continued contumacy, and the probable effectiveness of any suggested
23 sanction in bringing about the result desired.'" *Whittaker*, 953 F.2d at 516 (citing
24 *United States v. United Mine Workers of America*, 330 U.S. 258, 304 (1947)).

25 Compensatory sanctions, in contrast, are paid to the party bringing the civil
26 contempt motion and are intended to compensate for losses suffered as a result of the
27 contemptuous conduct. *Portland Feminist Women's Health Center v. Advocates for
Life, Inc.*, 877 F2d 787, 790 (9th Cir. 1989). Such compensatory sanctions may

1 include plaintiffs' costs to bring the contempt proceeding, including reasonable
2 attorney's fees. *Id.*

3 **1. A \$1,000 Daily Coercive Fine is Appropriate.**

4 The Non-Compliant ISPs have shown disdain for this Court's Permanent
5 Injunction Order, and have taken no steps to comply. The Non-Compliant ISPs'
6 refusal to obey the Permanent Injunction Order empowers the Enjoined Parties to
7 continue infringing Plaintiffs' copyrights in violation of the Permanent Injunction
8 Order through use of the Non-Compliant ISPs' services. As a result, the massive
9 infringement of Plaintiffs' copyrighted TV programs continues unabated on a daily
10 basis, notwithstanding entry of injunctive relief.

11 Such brazen disregard for this Court's Permanent Injunction Order and the
12 serious harm being suffered by Plaintiffs requires a significant coercive sanction of
13 \$1,000 per day for every day that the Non-Compliant ISPs fail to comply. Such a fine
14 is consistent with other coercive sanctions imposed in this Circuit. *See HM Elecs.,*
15 *Inc. v. R.F. Techs., Inc.*, No. 12CV2884-BAS (MDD), 2014 WL 12102169, at *2
16 (S.D. Cal. Dec. 16, 2014) (recommending imposition of \$1,000 daily coercive fine
17 on non-parties for contempt of court order); *Fed. Trade Comm'n v. Productive Mktg.,*
18 *Inc.*, 136 F. Supp. 2d 1096, 1112 (C.D. Cal. 2001) (imposing over \$16,000
19 compensatory fine plus daily fine of \$50, doubling every subsequent day of non-
20 compliance, on non-party for contempt of court order).

21 **2. An Award of Attorneys' Fees is Appropriate**

22 The Non-Complaint ISPs' disregard for this Court's Permanent Injunction
23 Order also warrants a compensatory sanction of assessing against each of the Non-
24 Compliant ISPs attorneys' fees and costs incurred by Plaintiffs in making this
25 motion. "The Ninth Circuit has held that a court may sanction a contemnor by
26 ordering that she pay a party's attorneys' fees and costs." *Bademyan*, 2009 WL
27 605789 at *4 (citing *Koninklijke Philips Elecs. N.V. v. KXD Tech., Inc.*, 539 F.3d
28 1039, 1042 (9th Cir. 2008)). "Where the moving party has incurred time and expense

1 in bringing a motion to enforce compliance with a court order, and the contemnor has
2 taken no steps to comply with the terms of the court's order, an attorneys' fees award
3 is particularly appropriate." *China Cent. Television v. Create New Tech. (HK) Ltd.*,
4 No. CV151869MMMAJWX, 2015 WL 6755188, at *7 (C.D. Cal. Nov. 4, 2015)
5 [ECF No. 140] (this Court previously held CNT in contempt and awarded attorneys'
6 fees against CNT in the amount of \$34,680.60).

7 Plaintiffs request that the Court assess against the Non-Compliant ISPs the
8 attorneys' fees and costs incurred by Plaintiffs in making this motion and direct that
9 Plaintiffs submit a declaration itemizing their attorneys' fees and costs within
10 fourteen (14) days of the Court's order for the Court's review.

11 IV. CONCLUSION

12 The Non-Compliant ISPs' disregard for this Court's Permanent Injunction
13 Order cannot be countenanced. Plaintiffs therefore respectfully request that this
14 Court issue the Compliance Order (a) holding each of the Non-Compliant ISPs in
15 contempt of court; (b) directing that each Non-Compliant ISP promptly comply with
16 the Permanent Injunction Order; (c) assessing against the Non-Complaint ISPs the
17 attorneys' fees incurred by Plaintiffs in making this motion; and (d) directing that any
18 Non-Compliant ISP that fails to comply with the Permanent Injunction Order within
19 five (5) court days of receiving notice of the Compliance Order pay to the Court a
20 fine of \$1,000 per day until such time as that Non-Compliant ISP complies with the
21 Permanent Injunction Order.

22 DATED: October 17, 2017

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DISH NETWORK L.L.C.